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8 *Court-Appointed Receiver*

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18 *Attorneys for Receiver*

19 UNITED STATES DISTRICT COURT  
20  
21 CENTRAL DISTRICT OF CALIFORNIA

22 SECURITIES AND EXCHANGE  
23 COMMISSION,

24 Plaintiff,

25 v.

26 PLCMGMT LLC, dba PROMETHEUS  
27 LAW, JAMES A. CATIPAY, and  
28 DAVID A. ALDRICH,

Defendants.

Case No. 2:16-cv-02594-TJH (FFMx)

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF RECEIVER'S  
MOTION FOR APPROVAL OF  
PROCEDURES FOR FINAL  
DETERMINATION OF  
INVESTOR CLAIMS AND  
FIRST INTERIM DISTRIBUTION  
TO INVESTORS**

Judge: Hon. Terry J. Hatter, Jr.  
Ctrm.: 9B  
Date: UNDER SUBMISSION  
Time: UNDER SUBMISSION

1                   **I.       Introduction**

2                   Thomas W. McNamara, as the Court-appointed Receiver of Defendant  
3                   PLCMGMT LLC, dba Prometheus Law (“Receiver”),<sup>1</sup> seeks the Court’s approval  
4                   of “Procedures for the Receiver’s Final Determination of Investor Claims and Pro  
5                   Rata Distributions to Investors with Approved Claims,” attached as Exhibit A  
6                   (“Claims Procedures”), and approval to make a first interim distribution to  
7                   investors with approved claims, pro rata, totaling \$1,056,435.

8                   The Receiver had previously deferred confirmation of a claims procedure  
9                   and approval of a first interim distribution as the funds available for a distribution  
10                  were not adequate relative to the administrative expenses required. In the Third  
11                  Status Report filed August 29, 2017 (ECF No. 99), the Receiver indicated that  
12                  funds from the potential sale of the Flower Street Condo, combined with other  
13                  current assets, should generate enough funds to commence interim distributions.

14                  The sale of the Flower Street Condo was approved by the Court on  
15                  November 13, 2017 (ECF No. 105) and completed on November 21, 2017 with net  
16                  proceeds to the receivership of \$968,993.13. As such, the receivership may now  
17                  proceed with a first interim distribution and a final determination of investor  
18                  claims.

19                   **II.       The Claims Universe**

20                  From the outset of the receivership, the Receiver has maintained an investor  
21                  database derived from our comprehensive review of the internal records of  
22                  PLCMGMT LLC, dba Prometheus Law (“Prometheus”) and on-going  
23                  communications with investors. In December 2016, the Receiver launched a mass  
24                  mailing (by U.S. Mail and email) to all identified investors which provided each  
25                  investor a report of what the receivership records indicate had been invested in  
26                  Prometheus. We asked any investor who disputed the reported amount to contact

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28                  <sup>1</sup> Mr. McNamara was appointed Receiver by the Preliminary Injunction  
                        entered April 26, 2016 (ECF No. 20).

1 us immediately. The responses were sparse and any corrections were *de minimis*,  
2 most relating to details of IRA accounts. We have also regularly updated our  
3 records to reflect address changes as we have received them.

4 Through this process, the Receiver has identified the universe of investor  
5 victims to be 251 investors (122 of whom invested through IRA accounts) with net  
6 losses of \$11.7 million.<sup>2</sup> Given the advanced state of this database, the Claims  
7 Procedures described herein will primarily serve to confirm that universe of  
8 investors and provide a final opportunity for those investors to identify any  
9 possible omissions or errors and/or to update their contact information as  
10 necessary.

11 **III. The Proposed Procedures**

12 The Claims Procedures set forth in Exhibit A have four basic components,  
13 which can be summarized as follows:

14 **A. Notice.** The Receiver shall provide notice to investors by posting a  
15 Notice on the Receiver's website, along with copies of the Claims  
16 Procedures and the Court's Order. The same Notice shall also be sent  
17 to investors by U.S. Mail and email.

18 **B. Preliminary Schedule.** The Receiver shall immediately post on the  
19 Receiver's website the Preliminary Schedule of Approved Claims  
20 based on the Receiver's detailed database and calculated on the  
21 investor's net stripped capital (cash in less cash out). Any investor  
22 who disputes the indicated amount of their investment may object in  
23 writing to the Receiver.

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27 <sup>2</sup> These conclusions were reported in detail in our Second Status Report (filed  
28 April 3, 2017, ECF No. 80) and have been the basis for the disgorgement amounts  
ordered against James Catipay and David Aldrich.

1           **C. Final Schedule.** The Receiver will investigate and resolve any  
2           objections and then file with the Court and post on the Receiver's  
3           website a Final Schedule. All decisions of the Receiver are final.

4           **D.** After posting the Final Schedule, the Receiver is authorized to make  
5           an initial pro rata distribution, on a pro rata basis, to investors in the  
6           total amount of \$1,056,435. The Receiver is authorized to make  
7           additional pro rata distributions in the future in such amounts and at  
8           such times as the Receiver deems appropriate.

9           Specific deadlines and time frames are set forth in detail in the Claims  
10          Procedures.

11          **IV. Pro Rata Distributions are Consistent with Ninth Circuit Law**

12          The Claims Procedures provide that the amount of each investor's approved  
13          claim shall be calculated based solely on the investor's "net stripped capital" which  
14          is defined as funds invested in Prometheus by or for the benefit of an investor less  
15          funds distributed by Prometheus to or for the benefit of that investor. The claim  
16          shall not include any provision for lost or reduced account values or any specified  
17          rate of return promised by Defendants.

18          The Claims Procedures further provide that distributions to investors shall be  
19          pro rata, meaning that each investor's interim distribution shall be the same  
20          percentage of their approved claim.

21          These procedures are consistent with the oft-recited principle that defrauded  
22          investors in a Ponzi scheme case should receive ratable distributions from  
23          receivership funds. *See Donell v. Kowell*, 533 F.3d 762, 776 (9th Cir. 2008)  
24          ("Courts have long held that [it] is more equitable to attempt to distribute all  
25          recoverable assets among the defrauded investors who did not recover their initial  
26          investments rather than to allow the losses to rest where they fell." (citation  
27          omitted)); *see also United States v. Real Property Located at 13328 & 13324 State*  
28          *Highway 75 N.*, 89 F.3d 551, 553 (9th Cir. 1996) ("[T]he equities demand[] that all

1 victims of the fraud be treated equally.” (citation omitted)); *Commodity Futures*  
2 *Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115-16 (9th Cir. 1999)  
3 (affirming approval of receiver’s pro rata distribution plan); *Commodity Futures*  
4 *Trading Comm’n v. Walsh*, 712 F.3d 735, 749 (2d Cir. 2013) (“A district court  
5 assessing a receiver’s plan for compensation of victims of a fraudulent scheme has  
6 equitable authority to treat all the fraud victims alike (in proportion to their  
7 investments) and order a pro rata distribution.” (citation, alteration, and internal  
8 quotation marks omitted)).

9 **V. Proposed First Interim Distribution**

10 The Receiver seeks approval to make a first interim distribution in the total  
11 amount of \$1,056,435 to be made on a pro rata basis. Since the \$1,056,435 to be  
12 distributed represents 9% of the total losses of \$11,738,168, each investor shall  
13 receive a distribution equal to 9% of their approved claim. For example, a  
14 \$100,000 investor will receive \$9,000 and a \$10,000 investor will receive \$900.

15 Exhibit B is a Receipts and Disbursements Summary for the receivership  
16 through December 1, 2017. It indicates current cash of \$1,312,619.53. After an  
17 interim distribution of \$1,056,435, net cash will be \$256,184, an appropriate  
18 reserve for on-going litigation and other costs.

19 The timing and amount of future distributions will depend on whether, and  
20 to what extent, the receivership accumulates additional assets.

21 As indicated in the Third Status Report of August 29, 2017 (ECF No. 99),  
22 the most promising “asset” of the receivership remains the potential fee sharing  
23 revenue from the Case Portfolio. To date, the receivership has received \$179,470  
24 in such fees. More than 95% of the cases relate to the drug Risperdal and, to date,  
25 there have been no settlements or verdicts in any of those cases and we have no  
26 current projections as to the timing and potential amount of future fee revenues  
27 from those cases.

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1 The Receiver requests that the Court approve the submitted Claims  
2 Procedures, approve a first interim pro rata distribution totaling \$1,056,435, and  
3 enter an order in the form of the Proposed Order submitted herewith.

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Respectfully submitted,

6 | Dated: December 12, 2017

MCNAMARA SMITH LLP

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By: /s/ Andrew W. Robertson  
Andrew W. Robertson  
Attorneys for the Receiver

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